

### **Remarks**

This Amendment is in response to the Office Action dated **February 1, 2011**. The Office Action rejected claims 26-36 and 38 under 35 USC § 112, first paragraph and rejected claims 26-36 and 38 under 35 USC § 103(a) over Hillstead (US 5,019,085) in view of Kanazawa (JP 07024072).

Independent claim 38 is amended to correct typographical errors.

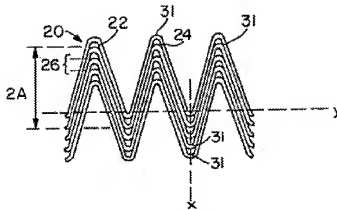
Dependent claims 39 and 40 are herein added. Support for these claims can be found in the Specification as-filed at least on page 10, lines 1-4.

In light of the foregoing amendments and following comments, Applicants request reconsideration.

### **Claim Rejections – Section 112**

The Office Action rejected claims 26-36 and 38 under 35 USC § 112, first paragraph, as allegedly “failing to comply with the written description requirement.” *Id* at 2. In particular, the Office Action asserts, “[t]he Applicant’s disclosure and drawings do not describe or clearly show the stent’s windings being in direct contact with each other when the stent is in its unexpanded configuration.” Applicants disagree and the rejection is *traversed*.

Pursuant to MPEP § 2163(I), the written description requirements is satisfied when the patent specification describes “the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention.” (Citing *Moba, B.V. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1319, 66 USPQ2d 1429, 1428 (Fed. Cir. 2003)). Contrary to the Office Action’s assertion, the immediate Specification satisfies this requirement. In particular, FIG. 5 of the immediate Application, shown below, depicts a configuration that “allows the waves to be stacked or nested with maximum compactness when the wire is helically wound around a forming mandrel (Figure 8) into the shape shown in Figure 2.” *Id* at 6, ll. 9-13.



**FIG. 5**

Further, in viewing FIG. 5, the skilled artisan would reasonably conclude that “at least a portion of the first wire wave is in direct contact with at least a portion of the second wire wave in the unexpanded state,” as is claimed, for example in independent claims 26 and 38. Consequently, Applicants request withdrawal of the § 112, first paragraph, rejection.

#### **Claim Rejections – Section 103**

The Office Action further rejected claims 26-36 and 38 under 35 USC § 103(a) over Hillstead in view of Kanazawa. The rejection is *traversed*.

As discussed in Applicants’ Amendment of June 17, 2010, which is herein incorporated by reference, Hillstead does not disclose “wire waves are longitudinally nested within each other,” as is claimed. In particular, Hillstead does not disclose, teach, suggest, or otherwise render obvious a peak-to-peak amplitude of longitudinally adjacent windings that is less than 2 time the amplitude, in accordance with the immediate specification. As such, Applicants again request withdrawal of the rejection.

In further rejecting independent claims 26 and 38 over Hillstead and Kanazawa, the Office Action acknowledges that the “Hillstead reference does not explicitly state that the windings of the stent will contact each other or have the claimed peak-to-peak distance.” *Id.* at 3. Nonetheless, the Office Action asserts, that “Hillstead discloses the stent being made of a flexible stainless steel wire which is capable of being compressed into various configurations which may include the windings being in contact with each other and the claimed peak-to-peak distance (col. 2, lines 27-44; col. 3, lines 24-30).” *Id.*

The Office Action has failed to establish a *prima facie* case of obviousness. In particular, the Office Action's assertion that the wire of Hillstead "is capable of being compressed into various configurations which may include the windings being in contact with each other," fails to articulate why the skilled artisan would be led to this particular configuration. Pursuant to MPEP § 2142, "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (Quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). *See also KSR*, 550 U.S. 398, 418, 82 USPQ2d 1385, 1396 (quoting Federal Circuit statement with approval)). The Office Actions' assertion merely concludes, without underlying support from Hillstead, that such a configuration is possible, and therefore obvious. Moreover, the Office Action has failed to point to anything in Hillstead indicating the device of Hillstead can even take on the asserted configuration.

Finally, the addition of Kanazawa does not remedy the deficiencies of Hillstead. Whether considered independently or in combination, neither of Hillstead or Kanazawa, teaches, discloses, suggests, or otherwise renders obvious the subject matter of independent claims 26 and 38.

As such, Applicants' request withdrawal of the rejection of independent claims 26 and 38 and dependent claims 27-36, which depend from independent claim 26.

With regard to new claims 39 and 40, Applicants request consideration of these claims, which depend from claims 38 and 26, respectively.

**Conclusion**

Based on at least the foregoing remarks, Applicants request withdrawal of the rejections and allowance of claims 26-36 and 38-40. Favorable consideration and prompt allowance of these claims is earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

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